

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DATABASEUSA.COM LLC,
a Nevada Limited Liability Company
with its principal place of business
in the State of Nebraska,

Plaintiff,

v.

THE SPAMHAUS PROJECT, a
company limited by guarantee and
organized under the laws of England,
aka THE SPAMHAUS PROJECT LTD,

Defendant.

CASE NO.: 8:19-cv-423

AFFIDAVIT OF FRED VAKILI

I, Fred Vakili, being first duly sworn, upon oath, depose and state as follows:

1. I am an individual over the age of 19 years residing in Omaha, Nebraska, and do not suffer from any disability which would impact my testimony. I have personal knowledge of all matters set forth herein.

2. I am the CEO of DatabaseUSA.com LLC ("Database"). I am the former Chief Administrative Officer of InfoUSA and I spent over 25 years in various leadership positions. I have familiarity with valuing businesses and revenue projections of the companies I am involved in.

3. Database is a business engaged in gathering and providing various information and databases for the purposes of marketing and analytics. Database gathers its information to assist companies with marketing, including email marketing.

4. A primary function of Database's business is predicated on its ability to gather and disseminate information through email.

5. Database does not directly email or “spam” individual persons or customers to gather this information, however.

6. Database is hired by companies that are seeking to improve their marketing via Database’s cultivated information databases.

7. Database often works with large companies seeking to improve their own marketing using information purchased from Database to well-known companies. The information gathered by Database is “triple verified” for accuracy to assist its clients with their marketing abilities.

8. I have become familiar with the Spamhaus Project (“Spamhaus”) over the years. Spamhaus maintains various “blocklists” which block or prevent emails from being received by Spamhaus users, mainly internet service providers or (“ISPs”). I have personal knowledge that Spamhaus is not an infant or an incompetent person as set out in Federal Rules of Civil Procedure Rule 55(b)(2).

9. When an ISP uses a Spamhaus blocklist, that ISP’s customers are blocked from receiving emails or communications from entities on the blocklist.

10. Outside of Spamhaus’ blocklist, Database has not been removed from any ISP for violating any authorized use policy.

11. One of the automated lists that Spamhaus generates is the Domain Block List (“DBL”). According to the Spamhaus website, “[m]ost DBL listings occur automatically, although where necessary Spamhaus researchers will add or remove listings manually.” Attached as Exhibit A is a screenshot from Spamhaus’ website. *See* <https://www.spamhaus.org/dbl/>

12. Spamhaus claims that, “[t]he DBL includes domains which are used in unsolicited bulk email including phishing, fraud, “419,” or sending or hosting malware or viruses, as well as

other domains with poor reputation due to many heuristics.” See Exhibit A from Spamhaus’ website. See <https://www.spamhaus.org/dbl/>

13. In about May of 2017, Database discovered that it was added to one of Spamhaus’ blocklists. Database was briefly removed in November of 2017, but was soon returned to the blocklist where it has remained since.

14. Despite its representations that the DBL only contains the domain names of entities that send emails including phishing, fraud, “419,” malware, or viruses, Spamhaus nevertheless listed Database on the DBL, in spite of the fact that Database has never partaken in any of the prohibited actions that result in placement on the DBL.

15. Database has brought Spamhaus’ error to its attention multiple times. Database has made numerous attempts to have its name removed from the DBL by communicating the problem directly to Spamhaus and following the prescribed channels of removal. Instead of acknowledging its erroneous inclusion of Database on the DBL and removing them from the register, Spamhaus has continued to wrongfully keep Database on the DBL.

16. Database has routinely followed the procedures at Spamhaus’ “Blocklist Removal Center” in an effort to get off of Spamhaus’ blocklist.

17. On June 20, 2019, a representative from Spamhaus responded to one of Database’s removal. A true and correct copy of this correspondence is attached as Exhibit B, in which Spamhaus states:

We have reviewed the DBL listing for databaseusa[.]com and decided that we will retain that listing at this time. We do not discuss criteria for inclusion in DBL, however it includes many factors. Your domain matches several of those criteria.

DBL listings expire over time, so if our systems do not see your domain for a while it will drop out of DBL zone. Many factors which affect your domain's reputation may also change over time, so by engaging in good reputation practices

it will eventually drop out of DBL. For more information, please see DBL FAQ "Why is my domain listed in DBL?"

<http://www.spamhaus.org/faq/section/Spamhaus%20DBL#371>

18. Despite all efforts to get relief from Spamhaus' blocklist, Database remains listed on the DBL blocklist. Since June 20, 2019, Spamhaus has refused to communicate with Database and has not provided any information as to why Database has violated Spamhaus' "criteria."

19. To date, Spamhaus has refused to provide any reason or justification for placing Database on the blocklist.

20. As a direct and proximate result of Spamhaus placing Database on the blocklist, Database has been severely damaged through its inability to work with and communicate with its own customers. Spamhaus has severely damaged Database through lost customers, lost business, lost opportunities, and lost revenue.

21. Spamhaus lists are utilized by major companies and platforms in the United States, including Microsoft Outlook and ISPs throughout the country. In addition, Database has been barred from LinkedIn and had its advertisements devalued on Google and Bing as a result of the blacklisting.

22. Database has lost a number of clients and/or opportunities as a result of Spamhaus' block list, the inability to send emails, and the messages being displayed on social media sites as a direct result of being included on Spamhaus's DBL. Database's reputation in the business community has suffered significantly and continues to suffer, all as a consequence of Spamhaus's wrongful acts.

23. To date, and despite repeated requests to remove Database from the DBL, Spamhaus refuses to do so without reason. Spamhaus's refusal has caused substantial harm to Database, so much so that Database faces irreparable harm to its economic interests and

reputation such that only the equitable relief sought below will be adequate under the continuing circumstances of this case.

24. Database is still listed on Spamhaus' blocklist. See attached Exhibit C a true and correct copy of a screenshot from August 7, 2019 of Spamhaus' website.

25. Database has suffered extensive monetary damages as a result of being placed on the blocklist. Since inception in 2011, Database realized a substantial growth rate each year up until it was placed on the blocklist. Database has suffered significant losses as a direct and proximate result of being placed on the blocklist. The blocklist has had a direct and significant impact on our ability to continue to conduct business.

26. If Database is not removed from the Spamhaus block list it will continue to suffer severe losses to its revenue. If Database is not removed, Database will eventually be forced to cease operations.

27. I am aware of the Database's financial condition over the years as well as Database's customer relations and ability to grow.

28. Database was formed in 2011. In 2011, Database had revenue of \$1,600,000.00.

29. In 2012, Database had revenue of \$2,213,000.00, which represented approximately a 38% growth rate.

30. In 2013, Database had revenue of \$2,764,000.00, which represented approximately a 25% growth rate.

31. In 2014, Database had revenue of \$5,217,000.00, which represented a growth rate of approximately an 88% growth rate.

32. In 2015, Database had revenue of \$6,528,000, which represented a growth rate of approximately 25%.

33. In 2016, Database had a revenue of \$8,153,000, which represented a growth rate of approximately 25%.

34. Through 2016, Database had 6,581 different customers.

35. In 2017, Database was placed on the Spamhaus blocklist. This had a direct impact on both customer relations, customer retention, and the ability to generate new business.

36. In 2017, Database had a revenue of \$8,926,000, which represented a growth rate of approximately 9%. Database's growth slowed significantly as a direct and proximate result of the blocklist.

37. The blocklist in 2017 impacted customer retention. In 2017, only 575 of our customers returned. Similarly, in 2017, Database was only able to generate 1,589 new customers.

38. As a result of the blocklist, Database has been blocked from the LinkedIn platform, which is a standard-bearer of all online business networking platforms.

39. In 2018, Database had a revenue of \$9,279,000, which represented a growth rate of approximately 4%.

40. In 2018, only 450 customers returned. Database was only able to generate 1,184 new customers

41. In 2019, only 274 customers returned. Database was only able to generate 861 new customers in 2019 up to this point.

42. Database's decline in revenue is in stark contrast to other companies in the similar field. Database is one of only three companies in the United State that deals in original compiling of comprehensive databases. The two other businesses have estimated revenues of \$1.8 billion and \$500 million.

43. There has been a significant and systematic decline in both Database's ability to generate new customers and new business, as well as Database's ability to retain current and existing customers. The blocklist provides a stigma that Database is doing something wrong or illegal, which is completely false.

44. Further, the blocklist makes it impossible to communicate on a consistent basis with our customers as all of our emails are caught by spam filters. The inability to service customers has been detrimental to our retention rate. This is all caused as a direct and proximate result of Spamhaus wrongfully and fraudulently placing Database on the blocklist.

45. Assuming the growth rate from 2015 and 2016 continued, I was able to project our revenue for 2017 if Spamhaus had not placed us on the blocklist. I believe, with a reasonable degree of certainty, that our growth rate of 25% would have continued in 2017 but for Spamhaus adding us to the blocklist. This means, Database should have realized revenue of \$10,191,250 in 2017.

46. I believe the growth rate would have continued in 2018. I project, with a reasonable degree of certainty, that Database would have realized revenue of \$12,739,062.50 in 2018 but for Spamhaus adding us to the blocklist.

47. Similarly, I believe the growth rate would have continued in 2019. I project, with a reasonable degree of certainty, that Database would have realized revenue of \$15,923,828.13 in 2019 but for Spamhaus adding us to the blocklist.

48. I believe the appropriate methodology to value Database would be based on 3 times revenue. As of 2019, Spamhaus has devalued Database by not less than \$18,000,000.00.

49. I believe it would be difficult to quantify the total losses to Database going forward if we are not removed from the blocklist. The blocklist restricts our business and

prevents any potential growth. While I do believe that Database has been devalued by \$18,000,000.00 as a direct and proximate result of the blocklist, I do not believe that mere monetary damages by itself will be sufficient.

50. The damage caused by Spamhaus' blocklist to Database's name, goodwill, reputation, and ability to function as a business is catastrophic. Money damages itself is insufficient. Further, going forward it will become difficult to project continued growth and damages. That is why I have calculated the diminution of value to a reasonable degree of certainty as of today. However, going forward, Database will need an injunction against Spamhaus to prevent

51. Without an injunction, I believe that the continued damage to Database's business will be irreparable.

FURTHER AFFIANT SAYETH NOT.




Fred Vakili

STATE OF NEBRASKA)
)ss
COUNTY OF DOUGLAS)

SUBSCRIBED AND SWORN TO before me this 24th day of December, 2019, by Fred Vakili.

DENNIS GUENTHER General Notary – State of Nebraska My Commission Expires Feb 6, 2022
--



Notary Public

EXHIBIT A



Home	SBL	XBL	PBL	DBL	DROP	ROKSO			
------	-----	-----	-----	------------	------	-------	--	--	--

Blocklist Removal Center

About Spamhaus | FAQs | News Blog



Blocklist Help

Blocked? To check, get info and resolve listings go to

► Blocklist Removal Center

Associated Documents

- DBL FAQs
- DNSBL Usage Terms
- How Blocklists Work
- Datafeed Service

The Domain Block List (DBL)

The Spamhaus DBL is a list of domain names with poor reputations. It is published in a domain [DNSBL](#) format. These domain reputations are calculated from many factors, and maintained in a database which in turn feeds the DBL zone itself.

Who can use the DBL?

The DBL zone is publicly queriable with real-time responses, just like other Spamhaus DNSBL zones. Those running mail server software capable of scanning email headers and message bodies for URIs can use the DBL to identify, classify, or reject mail containing DBL-listed domains. Security professionals and researchers also use domain reputation in their work.

How is the list compiled?

The DBL's reputation database is maintained by a dedicated team of specialists using various data from many sources to craft and maintain a large set of rules controlling an automated system that constantly analyses a large portion of the world's email flow and the domains in it. Most DBL listings occur automatically, although where necessary Spamhaus researchers will add or remove listings manually. DBL data is exchanged with other Spamhaus systems which can result in further listings in the DBL, or in IP addresses being listed in other Spamhaus zones.

How can you use the DBL?

The DBL works well as both a domain URI Blocklist and as a right-hand side block list (RHSBL). It is effective for filtering email during the SMTP session for all header domain checks - rDNS, HELO, MAIL FROM, From, Reply-To, and Message-ID domains - as well as URLs in messages. The DBL is widely used by many parties, both large and small, for checks involving domain reputations, across email and other applications.

DBL is managed as a near-zero false positive list, safe to use by production mail systems to reject emails that are flagged by it. Furthermore, it can be used for tagging, scoring, or foldering. The DBL includes domains which are used in unsolicited bulk email including phishing, fraud, "419," or sending or hosting malware or viruses, as well as other domains with poor reputation due to many heuristics.

Removal from the DBL

Similar to the Spamhaus PBL, the DBL has a monitored, automated, self-service removal system. DBL listings also expire automatically after domains disappear from common use, or as reputation factors change.

Further information

Mail server administrators, spam filter developers, security professionals, and those with listed domains should check the [DBL FAQs](#) for more information.



The DBL lists ONLY domains. Do not query the DBL for IP addresses.

DNSBL Usage Terms

Use of Spamhaus's free public DNSBL service is restricted to low-volume non-commercial users only. To make sure you qualify for free use, please see the terms:

DNSBL usage terms

EXHIBIT B

-----Original Message-----

From: Spamhaus DBL Team <dbl-mmxviii@spamhaus.org>

Sent: Thursday, June 20, 2019 4:18 PM

To: Dave Johnson <dave.johnson@databaseusa.com>

Subject: [DBL216207] DBL removal request for databaseusa[.]com

Hello,

We have reviewed the DBL listing for databaseusa[.]com and decided that we will retain that listing at this time. We do not discuss criteria for inclusion in DBL, however it includes many factors. Your domain matches several of those criteria.

DBL listings expire over time, so if our systems do not see your domain for a while it will drop out of DBL zone. Many factors which affect your domain's reputation may also change over time, so by engaging in good reputation practices it will eventually drop out of DBL. For more information, please see DBL FAQ "Why is my domain listed in DBL?"

<http://www.spamhaus.org/faq/section/Spamhaus%20DBL#371>

--

The Spamhaus Project - DBL Team

EXHIBIT C



Home	SBL	XBL	PBL	DBL	DROP	ROKSO			
------	-----	-----	-----	-----	------	-------	--	--	--

Blocklist Removal Center

[About Spamhaus](#) | [FAQs](#) | [News Blog](#) 

Select Language ▼

Blocklist Removal Center

Blocklist Documents

- ▶ SBL FAQs
- ▶ XBL FAQs
- ▶ PBL FAQs
- ▶ DBL FAQs
- ▶ How Blocklists Work
- ▶ Lookup another address

Blocklist Lookup Results

databaseusa.com is listed in the DBL

- [databaseusa.com](https://www.spamhaus.org/blocklists/dbl/domain/databaseusa.com/)

This lookup tool is for manual (non-automated) lookups only. Any perceived use of automated tools to access this web lookup system will result in firewalling or other countermeasures.

▶ **Not Listed.** If the IP address or domain you are checking does not show as listed in the results above, then it is not currently in any Spamhaus blocklist. If you are getting email reject messages which say it is listed by a Spamhaus blocklist, then see [this FAQ](#) for a possible solution.

▶ **Listed.** If the IP address or domain you are checking is listed in any of our blocklists above, this page will tell you which one(s) and will give you a link to the exact record. Follow the link. The linked page will explain why the address is listed and what to do to have it removed.

